

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Eugene N. Turk

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision  
of a Determination or a Refund of Personal Income  
Tax under Article 22 of the Tax Law for the Years  
1975 - 1977.

State of New York  
County of Albany


Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Eugene N. Turk, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eugene N. Turk  
1796 East 29th St.  
Brooklyn, NY 11229

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
6th day of October, 1982.

  
JAMES D. HAGLUND  
AUTHORISED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 6, 1982

Eugene N. Turk  
1796 East 29th St.  
Brooklyn, NY 11229

Dear Mr. Turk:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
EUGENE N. TURK : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Taxes under Article :  
22 of the Tax Law for the Years 1975, 1976 and :  
1977.

---

Petitioner Eugene N. Turk, 1796 East 29th Street, Brooklyn, New York 11229, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1975, 1976 and 1977 (File No. 23803).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 3, 1981 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether petitioner, Eugene N. Turk, was a person required to collect, truthfully account for and pay over New York State withholding taxes of G & I Dairy Corporation during the years 1975, 1976 and 1977.

FINDINGS OF FACT

1. By Statement of Deficiency and Notice of Deficiency dated June 26, 1978, the Audit Division asserted a penalty of \$3,350.85 against petitioner, Eugene N. Turk, pursuant to section 685(g) of the Tax Law related to unpaid withholding taxes of G & I Dairy Corporation as follows:

<u>YEAR</u>	<u>DEFICIENCY</u>
1975	\$ 419.25
1976	2,232.40
1977	699.20
TOTAL	<u>\$3,350.85</u>

2. In August, 1975, one Barry Peretz requested the aid of petitioner in obtaining loans from private investors to open a dairy discount store. Due to a close personal relationship with the parents of Barry Peretz, petitioner contacted various acquaintances and received the loans needed. As security to the investors, the lease of the business premises was held by petitioner and he was designated treasurer of the corporation. Funds invested were deposited into a bank account and handled by petitioner during renovations to the leased premises. When the store was ready for operation, the account was turned over to Barry Peretz, president, and his wife Gail, secretary, for their use in managing the business, known as G & I Dairy Corporation. Petitioner relinquished control of the bank account at that time.

3. From the start of the business operation in October, 1975, all books and records were in the custody and control of Barry Peretz, and his wife, who was the full-time bookkeeper. Petitioner served as legal representative in forming the corporation and as accountant in summarizing any accounting matters Mrs. Peretz was unable to perform. Petitioner prepared certain tax reports from information provided by Mrs. Peretz. Petitioner prepared and signed as treasurer the New York State Corporation Franchise Tax Return for the fiscal year ended July, 1976. Petitioner did not receive compensation for his professional services or as officer of G & I Dairy Corporation.

4. During the latter part of 1976, petitioner became aware of financial difficulties of the corporation when loans by the private investors were not being repaid. Petitioner confronted the principals and demanded that the payments be made current and requested all records of the operation. By December, 1976, all employees were let go and the store was left with only

about \$400.00 worth of inventory. All books and records of the business operation disappeared along with the principals.

5. Other than the initial formation of the corporation, petitioner had no financial responsibilities and had no control over the cash flow of the operation. Petitioner had no authority to hire or fire employees nor did he sign checks after the renovation of the premises was completed and the bank account relinquished.

CONCLUSIONS OF LAW

A. That with the exception of signing checks during renovation of the leased business premises, petitioner had no role in the management of G & I Dairy Corporation. Accordingly, petitioner was not a person required to collect, truthfully account for and pay over New York State withholding taxes of G & I Dairy Corporation within the meaning and intent of section 685(n) of the Tax Law. That, therefore, petitioner is not subject to a penalty under section 685(g) of the Tax Law.

B. That the petition of Eugene N. Turk is granted and the Notice of Deficiency dated June 26, 1978 is cancelled.

DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER